

USDA AMS

Formal Complaint Suggestions

SUGGESTIONS FOR PREPARING FORMAL COMPLAINTS UNDER THE PACA INVOLVING FAILURE TO MAKE PAYMENT

1. THE SAMPLE OUTLINE SHOULD NOT BE FILLED IN. It is intended merely as a guide. Choose only the wording that applies to your particular case. Paragraphs 3 and 9 may be copied as they appear on the outline. You do not need to use Paragraphs 5 and 6 unless a broker or inspection was involved, respectively. For reference, number each paragraph of your formal complaint.
2. An original and 3 copies of the formal complaint are needed. If more than one respondent is involved, an extra copy of the complaint must be submitted for each additional respondent.
3. The caption, or heading of the complaint, must show the correct trade name of both complainant and respondent.
4. Paragraphs 1 and 2 of the complaint must accurately describe your and respondent's legal makeup. For example, if a partnership, the name of each partner must be shown. The information on respondent appears in the accompanying letter from the USDA. Copy this information into the heading and paragraph 2 of the complaint.
5. The complaint must contain the following basic allegations:
 - (a) That the commodity in question is a fresh or frozen fruit or vegetable within the jurisdiction of the PACA (see outline, paragraph 4) as a perishable agricultural commodity.
 - (b) That the transaction(s) involved interstate or foreign commerce (see outline, paragraph 4).
 - (c) That you complied with the contract requirements (see outline, paragraph 7).
 - (d) That respondent has violated Section 2 of the PACA by failing to live up to meet its responsibilities (see outline, paragraph 9).
 - (e) The amount of damages you claim and how you computed this amount (see outline, paragraphs 8 and 10).
6. You can show interstate commerce by listing the point of shipment and the intended or contract destination. You can show foreign commerce by establishing the country of origin of the product. It must be shown that the goods were either received or shipped in interstate and/or foreign commerce or that the contract was made with the understanding that the shipment would move in interstate or foreign commerce.

7. Original or true copies of pertinent papers relating to the transaction should accompany the complaint as exhibits. Attach A COMPLETE SET OF NUMBERED EXHIBITS TO EACH COPY of the complaint.

8. Exhibits must be numbered and referred to, either individually or together, in a separate paragraph. (see outline, paragraph 11).

9. The original and all copies of the formal complaint should be signed by a principal of the complaining firm; preferably the owner, a partner, or an officer. Persons other than those mentioned above may sign the complaint if they are duly authorized by the complaint to act on its behalf. However, the person signing the complaint should have firsthand knowledge of the transactions involved.

10. The original of the complaint should be signed and sworn to before a notary public. The name of the person who signed the complaint should appear in the verification statement. The notary's signature, seal (in those states requiring a seal) and commission expiration date should appear on ALL copies of the complaint.

11. In complaints involving \$30,000 or less, the Hearing Officer will consider the contentions submitted by complainant and respondent in the complaint and answer, sworn statements of fact and any report of investigation prepared by USDA. Consequently, it is important that all papers relating to the transaction be made part of the file, either by attachment to sworn statements and depositions, or as separate exhibits.

12. Complaints involving more than \$30,000 will be decided without oral hearing unless requested by one of the parties.

13. Each party to the dispute is responsible for proving facts it claims to be true but which are in dispute.

14. Any payment received from respondent while the complaint is pending, or after decision by the Secretary, should be reported at once.

15. The Sample Outline is guide, only. DO NOT FILL IT IN.